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THE LPFM FIASCO: Micropower Radio & the FCC's Low Power Trojan Horse

by Ron Sakolsky
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AFTER FIRST ANNOUNCING tentative plans on January 28, 1999 for legalizing low power radio and allowing for a lengthy year long period of public comment, study and deliberation, FCC Chairman William Kennard floated a proposal on January 19, 2000 which provided new rules that envisioned the licensing of an estimated 1,000 new Low Power FM (LPFM) stations in the range of 10-100 watts. Yet, by the end of last year, after 1200 applications had already been filed in the 20 states initially eligible to participate in the LPFM sweepstakes, Congress caved in to lobbying pressure from both the National Association of Broadcasters (NAB) and National Public Radio (NPR), and gutted this already modest FCC proposal for a new LPFM radio service.

Amidst an NAB and NPR scare campaign about potential interference problems, the language of what had once been the industry-promoted Radio Broadcasting Preservation Act was attached as a rider to the Omnibus Budget Act of 2000. Using the threat of supposed interference as a pretext, the Act limits the number of possible licenses by holding newly created LPFM stations to an extremely conservative standard of having to be three bandwidths, rather than two as the FCC had originally mandated, away from any other station already existing on the dial (89.1-92.1 instead of 90.1-92.1, for instance).

Even with this enhanced spacing restriction, there was a flood of applications. By late December 2000 estimates by the pro-LPFM Prometheus Radio Project, the number of licensed LPFM stations which met the three bandwidth requirement ranged from 250-500. However, these stations will be mostly in rural areas because the new spacing rules are very difficult to meet in urban localities. Of course, full implementation optimistically assumes there are no future backroom legislative deals to squelch the service or efforts by executive branch power brokers to let it die on the vine from neglect.

Stalling the Process

Revealingly, Congress has called on the FCC to study the economic impact of these new stations on corporate radio outlets as well as the aforementioned possibility of interference problems even with a three bandwidth separation safeguard in place. As to the latter study, the new service must choose nine "test market" stations from among those already approved or else set up their own field testing that requires assembling temporary stations, which will simply broadcast tape loops or test tones for experimental purposes only. These newly required tests, of course, serve to stall full implementation of the LPFM service with no date yet specified as to the length of the experiment. Then Congress, which in an unprecedented move has usurped authority for implementation from the FCC, must decide the future of the new radio service.

Suffice it to say that as 2001 arrived the future of LPFM looked bleak with George W. Bush in the White House, a Republican-controlled Congress and new presidentially-appointed FCC chair calling the shots.

While the FCC's original LPFM rules were ultimately superseded by Congressional edict, it is worth noting that even they were controversial not only within NAB/NPR circles, but also inside the free radio movement itself. The FCC—intentionally or in effect—promoted a divide and conquer strategy that split the movement into two camps. The first camp consisted of those who supported licensed LPFM, like the Prometheus Radio Project, largely organized by the disenfranchised buccaneers of Philadelphia's Radio Mutiny station, which had been shut down by the FCC. After tirelessly lobbying the FCC and Congress on behalf of LPFM, the Prometheus Radio Project led workshops throughout the country in relation to the final FCC plan under the banner of, "So You Want To Apply For A Low Power FM License."

Though not opposing radio piracy per se, these touring workshops emphasized the licensed LPFM model in a way that was in marked contrast to an earlier Radio Mutiny era tour, which had incited free radio stations to go on the air without a license in defiance of the FCC. Prometheus has continued to organize on behalf of LPFM, even when faced with the Omnibus Budget Act's efforts at "radio preservation," which reduced the number of potential licensees to about half of the FCC's originally promised number.

In the opposing camp were those, like microradio pioneers Mbanna Kantako (Human Rights Radio in Springfield, Illinois) and Stephen Dunifer (Free Radio Berkeley), who refused to endorse the lobbying of Congress in support of even the FCC's initial LPFM proposal, seeing it as an attempt at government cooptation. Moreover, as they predicted, that original proposal would ultimately fall victim to the more entrenched power of the broadcasting industry, if not in its earlier FCC stage then later on at the Congressional level, where the NAB could be relied upon to flex its lobbying muscles in an election year.

As Dunifer put it in a widely circulated email message to the free radio movement on January 12, 2000, "Writing to your Congressman is not going to do any good unless there is a check for at least \$10,000 attached with a promise of more to come... Congress does not give a rat's ass about what any of us think or want. And neither does the FCC, it's all about damage control on Kennard's part. He knows that the government does not have the resources to deal with thousands of folks taking back *their* airwaves. So he had to come up with a strategy

that would fool folks who somehow still believe the system has a degree of legitimacy and credibility and would participate in the process—just a charade really in the final analysis... Our real strength has always been the threat of an ungovernable situation on the airwaves—let's make that threat a damn credible reality by putting hundreds and thousands of free radio stations on the air."

In fact the FCC's proposal for LPFM refused to acknowledge the free radio movement's role in forcing the issue of low power broadcasting onto the public policy-making agenda in the first place. It also failed to recognize the action of seizing the airwaves as being within the framework of civil disobedience. Even the original FCC rules allowed no amnesty for the micropower broadcasters who had previously been busted or who, by remaining on the air, had challenged the FCC's old prohibition of stations under 100 watts and raised the larger issues of free speech and the "right to communicate."

When the preliminary announcement of pending LPFM rules was made, Kennard ordered illegal broadcasters to halt operations within 24 hours of being instructed to do so by the FCC or by February 26, 1999 if they expected to be eligible for possible licensing in the future. By the end of 2000 this promise had ultimately proved fleeting.

However, it had by then created a rift in the micropower movement as many unlicensed broadcasters rushed to "clean up" their acts in anticipation of LPFM licenses down the road. Those hopes were eventually dashed by the Congress. Such a sequence of events is not unusual in the context of a corporate state in which FCC liberals offered the carrot of licenses rather than simply relying on the stick of shutdowns in order to regain control of the airwaves.

The carrot was in essence the stick by other means, but the stick never fully disappeared. Instead, shutdowns actually increased, and the limited amnesty promised was removed by more conservative legislators once the damage to micropower movement solidarity had already been done.

Smothering Free Radio in Bureaucracy

Many free radio broadcasters, however, refused to abandon their stations since they had no desire to be officially licensed. Others held firm out of distrust of the FCC and/or a legislative process that was dominated by the corporate broadcasting industry. By not allowing the original micropower broadcasters to be licensed if they had refused to leave the airwaves during the approximately two years that transpired from the time of Kennard's original rule-making announcement until the passage of the Omnibus Budget Act of 2000, the FCC had acted to re-establish its authority over the airwaves and punish those radio rebels who had dared to challenge it.

Yet the free radio pioneers' suspicions that even the limited amnesty promised to those of them who had never been caught and voluntarily went off the air in compliance with the new LPFM-related FCC edict were proven valid in the end. Ironically, as the first African-American chair of the FCC, Kennard's proposal was the bureaucratic equivalent of telling civil rights activist Rosa Parks that though everyone else could now sit wherever they wanted in the bus she must remain seated in the back because the Montgomery bus boycott which she helped organize had been illegal under the laws of the Jim Crow South.

Like all government regulatory agencies, in spite of its populist rhetoric, the FCC has been captured by the very interest groups that it supposedly exists to regulate. Accordingly, the license approval process is subject to industry-dictated constraints rather than the democratic priorities of redistributing the airwaves along more diverse and egalitarian lines. The FCC rules actually act to enclose free radio within bureaucratic guidelines. Though the LPFM stations were originally designated noncommercial, initial reports indicate that political dissidents, grassroots activists and groups marginalized on the basis of a progressive to radical stance on class, race, gender or sexual orientation are still to be overwhelmingly excluded from the airwaves in favor of more moderate non-profit organizations, middle class minority entrepreneurs and "respectable" church groups. In fact, almost half of the licenses approved in the first round were church-related, with many of these being awarded to right-wing Christian fundamentalists.

Moreover, a very real potential problem for new recruits to the free radio movement is that the FCC can once again claim that it has legalized low watt radio, even though Congress has drastically reduced the number of eligible stations formerly proposed. Using this pretext, it can now give its agents the green light to aggressively go after those radio stations operating without a license. Previously, public opinion was often on the side of the free radio stations, which many saw as being unjustly restricted from entry to the radio dial, but the FCC can now claim that any aspiring station should simply follow LPFM guidelines and apply for a license if it wants to broadcast.

Regardless of the dilution of the original FCC plan, the traditional regulatory idea that micropower radio stations are legitimately subject to government crackdown efforts if they decide to go on the air without first formally being licensed has been given new currency. Formerly unlicensed stations have faced ever increasing harassment since the FCC put LPFM into motion.

Predictably, one of the first stations hit by this renewed wave of government repression was Human Rights Radio in Springfield, Illinois, which suffered two FCC raids at the end of 2000. In both cases the spurious charge was that the station was causing interference with air traffic control signals. Astoundingly, the air traffic controller who testified to the interference in court claimed the Human Rights Radio signal was coming from the John Hay Homes public housing project, which had once been its home, but which had been torn down years before his complaint.

Moreover, as Stephen Dunifer explained in an open letter originally sent to Springfield's *State Journal Register* but never published, the threat of such interference was being used as a red herring (the letter was later printed in a special Fall 2000 issue of the Springfield zine,

War Bulletin.) As Dunifer put it in his letter, "Air traffic control signals are narrow band AM, an amplitude modulated carrier with a frequency spread of 25 kilohertz or less, while micropower transmitters are FM, a frequency modulated carrier with a frequency spread of plus or minus 75 kilohertz taking up a channel 200 kilohertz wide. It would be very difficult for an air traffic radio receiver to receive an intelligible errant signal from an FM broadcast transmitter due to the fact that the receiver is designed only to pick up an AM signal that is much more narrow in spectrum width than an FM broadcast signal."

Regardless of these technical facts, in order to gain popular support, the FCC has increasingly relied on stories about planes falling out of the sky due to errant micropower transmissions as justification for their campaign to shut down unlicensed broadcasters, and Springfield's media have taken these claims at face value.

The first bust of Human Rights Radio occurred in October, just one week after it was announced in local media outlets that 13 groups in the Springfield area had applied for a seat at the table for the then-promised cornucopia of legally-sanctioned LPFM licenses. As if the message sent was not clear enough, the prosecuting attorney in court who successfully obtained an injunction requiring that Human Rights Radio [HRR] remained shut down, used the argument that the station was a renegade entity which deserved no sympathy now that LPFM licenses were in the offing. She noted that if [HRR's] Mbanna Kantako was a serious broadcaster he should have applied for an LPFM license. Of course, Kantako could not apply for a license even if he wanted to do so (which he does not) since no amnesty was granted by the FCC or Congress to former civil disobedients like himself.

Predictable Actions, Mainstream Media Coverage, & the Continuing Fight for Free Airwaves

Later on, this prohibition of amnesty for Kantako was conveniently ignored in the December 28 *State Journal Register* coverage of LPFM, which simplistically explained that Kantako had merely not applied for a license. The article then went on to celebrate the tentative licensing of two applicants in the nearby rural towns of Pana (where a church group had applied) and Taylorville (where ham radio hobbyists got approval).

In that same issue of the newspaper, reporter Matt Dietrich added insult to injury. At first he failed to cover the story of Kantako's October bust in spite of an email campaign directed at the editor of the *State Journal Register*, mobilized by a call to action on the national Independent Media Center website, Dietrich stayed true to corporate media form and wrote a "feel good" story profiling a legal low power radio station operator located in Springfield's predominantly black eastside community [Dec. 28].

Of course, the station in question is only 100 milliwatts strong (1/10 of a watt), and its programming consists entirely of playing R&B oldies rather than challenging the powers that be, but Dietrich repeatedly alluded to the operator as acting like a model citizen for doing everything by the book and being extremely careful about interference unlike, by implication, Kantako.

No mention was made of the fact that none of the 13 applicants for LPFM licenses in Springfield were deemed eligible under the new Omnibus Budget Act rules. Nor was any attempt made to interview them now that their license hopes had been scuttled, even though at the end of the filing period, they had originally been the subject of a "feel good" story of their own which seemed to imply that their licenses were in the bag.

The message to African-Americans in Springfield was clear: Be appropriately thankful for a minuscule legal station and you'll be the darling of the mainstream media, but fight for your right of access to the airwaves by civil disobedience and your station will get no coverage and you will be personally vilified as a threat to public safety. As for Kantako, he has ignored the injunction and was back on the air within about a week of the first bust. At the time of this writing he has vowed to resume broadcasting again in the wake of the second raid on his home-based station. [L i P]

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